

REMARKS:

Applicant has carefully studied the Office Action of November 25, 2003 and offers the following remarks in response thereto.

Applicant herein amends claims 70, 76, 91, and 115 to conform to the other independent claims. Specifically, the message provided to the calling party's communication device is a packet based message. Additional amendments are made to numerous claims to make the terms "communications" and "communication" consistent as "communication" throughout. The claims previously switched back and forth between the terms without any consistency. Applicant herein corrects this problem. No new matter is added by the amendments.

Initially, claims 61, 70, 76, 85, 91, 100, 106, and 115 were rejected under the judicially created doctrine of obviousness-type double patenting in view of U.S. Patent No. 6,324,265. Without admitting the propriety of the rejection, Applicant herein submits a terminal disclaimer to remove the rejection. In light of the terminal disclaimer, Applicant requests withdrawal of the rejection at this time.

Claims 61-64, 66, 68-71, 73-75, 77-79, 81, 83-86, 88-94, 96, 98-100, 103-105, and 107-109 were rejected under 35 U.S.C. § 102(e) as being anticipated by White et al. (hereinafter "White"). Applicant respectfully traverses. For a reference to be an anticipatory reference, the reference must show each and every claim element. Furthermore, the elements of the reference must be arranged as claimed. MPEP § 2131.

Applicant notes that claim 76 (an independent claim) is not listed in the introductory paragraph of section 3 of the Office Action, but it is addressed on line 1 of page 4. Applicant proceeds as if 76 is also rejected under § 102(e) as being anticipated by White.

Applicant further notes that claims 107-109 depend from claim 106, which was not rejected under § 102(e) as being anticipated by White. To the extent that the Patent Office, in its analysis of claim 106, admits that White does not show a computer readable medium as recited in claim 106, claims 107-109 which depend therefrom cannot be anticipated by White. Applicant requests the withdrawal of the § 102(e) rejection of claims 107-109 at this time.

Claim 61 recites "means for receiving a *packet based indication* that the attempted communication session was not completed" The Patent Office opines that this element is taught by White at col. 21, lines 61-64. While col. 21, lines 61-64 do indicate that the common channel signaling system determines that the call cannot be completed, there is no indication that

the indication received by the common channel signaling system is a *packet based* indication that the communication session was not completed. To this extent, the reference does not show a claim element and cannot anticipate the claim.

Furthermore, and more importantly, claim 61 recites "receiving means for receiving at the calling party's communication device a packet based message providing an indication of a treatment corresponding to the attempted communication session" The Patent Office opines that this is disclosed by White at col. 21, line 64 - col. 22, line 7, and points to Internet 106. However, as explained in col. 22, lines 1-7, VMS 125 informs the calling party that the line was busy. Communication between the calling party and VMS 125 does not pass through Internet 106 and thus does not constitute a packet based message providing an indication of a treatment. To this extent, the reference does not show a claim element and cannot anticipate the claim.

After amendment, independent claims 70, 76, 85, 91, and 100 recite similar elements. For example, claim 70 recites "providing means providing at the calling party's communication device a packet based message providing an indication of a treatment corresponding to the attempted communication session" Claim 76 recites "receiving means for receiving at the calling party's communication device a packet based message providing an indication of a treatment corresponding to the attempted communication session." Claim 85 recites "providing means for providing at the calling party's communication device a packet based message providing an indication of a treatment corresponding to the attempted communication session" Claim 91 recites "receiving at the calling party's communication device a packet based message providing an indication of a treatment corresponding to the attempted communication session." Claim 100 recites "providing at the calling party's communication device a packet based message providing an indication of a treatment corresponding to the attempted communication session" Thus, each claim recites the packet based message providing an indication of the attempted communication session. As White's VMS does not provide a packet based message to the calling party's device, the claims are not anticipated. In light of this fact, Applicant requests withdrawal of the § 102(e) rejection of claims 61, 70, 76, 85, 91, and 100 at this time.

Claims 62-64, 71, 77-79 and 86 depend from these independent claims and thus are not anticipated at least for the same reasons. Applicant further traverses this rejection on the grounds that the passage cited by the Patent Office to support the rejection is not part of the system

described by White. Specifically, White, at col. 3, lines 36-49, describes Creswell's system (see White, col. 3, line 17). Applicant reminds the Patent Office that the elements of the reference must be arranged as claimed. MPEP § 2131. Creswell's system forms no part of the White system cited elsewhere by the Patent Office, and thus the passage describing Creswell's system is not arranged relative to the rest of White's system and is not arranged as claimed. To this extent, the reference cannot anticipate the claims.

Further, Applicant respectfully traverses on the ground that the cause value recited in the claims is not inherent in White or Creswell's system. Specifically, for an element to be inherent, the element must necessarily be present in the reference. MPEP § 2112. To the extent that the attempt to establish the phone call may fail for numerous reasons (congestion, busy, etc.), there is not necessarily a cause value sent to the calling party's communication device. The only thing that the calling party's communication device necessarily receives is an indication that the call was not completed. To this extent, the element is not inherent, and the claims are not anticipated.

Claims 66 and 81 also depend from the independent claims and are not anticipated at least for the same reasons that the underlying independent claims are not anticipated.

Claims 68, 74, 83, 89, 90, 98, and 104 also depend from the independent claims and are not anticipated at least for the same reasons that the underlying independent claims are not anticipated. Applicant further traverses the Patent Office's assertion that the claim element of the version is provided in White at col. 21, line 64 - col. 22 line 7. Applicant has studied the cited passage and finds no teaching or suggestion that a version of the treatment is supplied. While there is a prompt to deliver a message and an indication of the cost, there is nothing that indicates that, e.g., v. 1.2 of the treatment is provided. To this extent, the reference fails to show a claim element, and the claims are not anticipated.

Claims 69, 75, 84, 99, and 105 also depend from the independent claims and are not anticipated at least for the same reasons that the underlying independent claims are not anticipated. Applicant further traverses the Patent Office's assertion that the claim element is taught by White at col. 22, lines 3-12. The claim recites a multimedia version of the treatment. The cited passage indicates that an audio prompt is played. Nowhere is there an indication that the audio prompt is a "multimedia treatment" as that term is interpreted by someone of ordinary skill in the art. To this extent, the claim element is not shown, and the claims are not anticipated.

Claims 92-94 and 101 also depend from the independent claims and are not anticipated at least for the same reasons that the underlying independent claims are not anticipated. Applicant further traverses this rejection on the grounds that the passage cited by the Patent Office to support the rejection is not part of the system described by White. Specifically, White, at col. 4, lines 13-28, describes Jordan's system (see White, col. 4, line 5). Applicant reminds the Patent Office that the elements of the reference must be arranged as claimed. MPEP § 2131. Jordan's system forms no part of the White system cited elsewhere by the Patent Office, and thus the passage describing Jordan's system is not arranged relative to the rest of White's system and the elements are not arranged as claimed. To this extent, the reference cannot anticipate the claims.

Applicant further traverses the assertion that the passage at col. 4, lines 13-28 describes the recited cause value. Applicant has studied the passage and finds nothing that corresponds to the cause value therein. If the Patent Office disagrees, Applicant requests that the Patent Office identify with particularity what element is being construed as the cause value.

Claims 96 and 103 also depend from the independent claims and are not anticipated at least for the same reasons that the underlying independent claims are not anticipated.

In light of the failure of the references to show the claim elements recited in the claim, Applicant requests withdrawal of the § 102(e) rejection of claims 61-64, 66, 68-71, 73-75, 77-79, 81, 83-86, 88-94, 96, 98-100, 103-105, and 107-109 at this time.

Claims 65, 67, 69, 72, 75, 80, 82, 84, 87, 95, 97, 99, 102, 105, 110, and 117 were rejected under 35 U.S.C. § 103 as being unpatentable over White in view of Creswell. Applicant respectfully traverses. For the Patent Office to establish *prima facie* obviousness, the Patent Office must show where each and every claim element is located in the combination of references. MPEP § 2143.03. Further, where the Patent Office advances a motivation to combine two references, the Patent Office is obligated to provide objective evidence supporting the motivation to combine. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999).

Initially, Applicant notes that nothing in Creswell cures the deficiencies of White. Since the references individually still do not show the packet based message, the combination of references cannot teach or suggest the packet based message. Since the combination does not teach or suggest a claim element, the Patent Office has not established *prima facie* obviousness.

Applicant further traverses the rejection on the grounds that the Patent Office has not provided the requisite objective evidence to support the combination as required by *Dembiczak*.

The Patent Office opines that the reason to incorporate alternate languages is to provide the capability for the system to operate in different languages. However, the Patent Office's motivation amounts to nothing more than a tautology. To this extent, the combination is improper and the Patent Office has failed to establish *prima facie* obviousness.

Claims 69, 75, 84, 99, and 105 deserve special mention in that they recite a multimedia treatment. As explained above, the passage at White col. 22, lines 3-12 teaches an audible prompt, this is not the same thing as the recited multimedia treatment and no one of ordinary skill in the art would equate the two elements. To this extent, these claims recite an element which the Patent Office has not shown and these claims are independently patentable over the rejection.

Claims 106-109, 111-114, 116, and 118-120 were rejected under 35 U.S.C. § 103 as being unpatentable over White. Applicant respectfully traverses. The standard for obviousness is set forth above.

As indicated in the anticipation rejection, White does not teach or suggest that the message is a packet based message. To this extent White cannot establish *prima facie* obviousness for these claims.

Claim 107-109 deserve special mention in that they recite the cause value. As explained above, White does not teach or suggest this cause value and the claims are independently patentable over the rejection.

Claim 109 deserves further mention in that the address cited by the Patent Office (White, col. 7, lines 21-27) is the address of a gateway router to establish a phone call over the Internet, not an address of a message. Thus, the passage does not support the Patent Office's rejection and claim 109 is independently patentable over the rejection.

Claim 113 recites that the indication includes the particular version of the treatment. As explained above, White does not teach the particular version of the treatment being included as part of the indication and thus, this element is not shown by the Patent Office. Since the element is not shown, the claim is independently patentable over the rejection.

Claim 114 recites the multimedia treatment. As explained above, White does not teach this element with its audible prompt. To this extent, the element is not shown and the claim is independently patentable over the rejection.

Applicant further notes that claim 115 is never rejected by the Patent Office. Since claim 115 has not been rejected by the Patent Office, claims 116-120 which depend therefrom cannot be rejected by the Patent Office. In light of this, addressing the rejection of claims 116-120 would be premature.

Applicant requests reconsideration of the rejection in light of the amendments and remarks presented herein. The references of record do not show a packet based message being delivered to the calling party's communication device. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

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Respectfully submitted,

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